IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 694 of 2004

with

CIVIL APPLICATION NO.2470 of 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USMAN ISMAIL

Versus

SURESH CHAND KALYANJI SHAH

Appearance:

1. First Appeal No. 694 of 2004

MR EE SAIYED for Appellant.

MR KIRTIDEV R DAVE for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 17/01/2005

ORAL JUDGEMENT

(Per : HON'BLE DR.JUSTICE J.N.BHATT)

1. The challenge in this appeal under Section 96 of the Code of Civil Procedure, 1908 is that the judgment and decree passed in Special Civil Suit no.173 of 1994 by the Civil Judge, Senior Division, at Bhuj (Kutch) on 30th April, 2004 is not legal and valid.

2. The respondent is the original plaintiff who initiated a legal battle by filing the above suit for recovery of Rs.1,31,000/- which was given to the appellant original defendant for the purpose of his business at the rate of 12% per annum. Since no amount was paid towards the due and payable amount of Rs.1,31,000/-, the original plaintiff filed the suit wherein the original defendant raised various contentions by filing written statement Exh.25. Surprisingly, he also denied all the facts including the amount of cheque and the stamp paper signed by him. Upon the pleadings, issues came to be raised by the trial Court, at Exh.77, on 31-7-1997.

3. The parties relied on their evidence and also the documentary evidence. The plaintiff relied on the evidence of Bhogilal Kalyanji Shah, at Exh.120, and Zaverilal Valjibhai Chauhan at Exh.135, whereas original defendant relied on his own evidence at Exh.147 and no more. Considering the submissions before the trial Court and the evidence both documentary, as well as, viva voce, the Court reached to the conclusion that the claim made in the suit is legal, valid and justified, as a result of which the suit came to be decreed in toto for an amount of Rs.1,31,000/- with interest at the rate of 12% per annum from the date of the suit till realization. Hence, this appeal under Section 96 of the Civil Procedure Code.

4. At this stage, we think it necessary to mention what had transpired on the first date before another Division Bench of this Court on 26th April, 2004. It appears that the arguments were advanced by the learned Advocate Mr. E.E.Saiyed appearing for the appellant before us. He had made extensive lengthy submissions. Despite that, the Bench was not inclined to admit the appeal, but for the assurance given by Mr.Saiyed, which could be very well visualized and seen from the order passed by, the then, Division Bench (Coram: K.R.Vyas and K.S.Jhaveri,JJ.):

" After having heard Mr.Saiyed at length we were not inclined to admit the appeal. However, with a view to see to it that some amicable settlement is arrived at between the parties and upon Mr. Saiyed showing his inclination to deposit initially 50% of the decretal amount and paying the balance amount in installments, we issue notice to the respondent, to be made returnable on 21st June,2004. The appellant shall deposit Rs.65,000/- on or before the returnable date."

However, notwithstanding that, the learned Advocate Mr.Saiyed stated before us that nothing has been done thus far. No amount has been paid by the appellant original defendant and that there is no likelihood of any settlement. He has also drawn our attention to certain aspects and has raised some submissions which we have considered. Upon consideration of the entire factual profile, the strong evidence of the original plaintiff and the reasoned judgment of the trial Court, we are of the clear opinion that this appeal under Section 96 of the Civil Procedure Code is quite meritless requiring no interference and deserves to be dismissed with a direction to the defendant-appellant before us to comply with the direction contained in the judgment and decree of the trial Court since Execution Petition as mentioned by learned Advocate Mr. Saiyed is already pending. With these observations, the First Appeal shall stand dismissed confirming the judgment and decree of the trial Court under challenge.

In view of the order passed in the main First Appeal, no orders on Civil Application no.2470 of 2004.

(Dr.J.N.Bhatt,J.)

(M.D.Shah,J.)

stanley-jnb.